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10 *Attorneys for Plaintiffs*

THE HONORABLE JOHN C. COUGHENOUR

11 UNITED STATES DISTRICT COURT
12 FOR THE WESTERN DISTRICT OF WASHINGTON

13 WASHINGTON TOXICS COALITION;) Civ. No. C04-1998C
14 NORTHWEST COALITION FOR)
15 ALTERNATIVES TO PESTICIDES;)
16 NATIONAL WILDLIFE FEDERATION;)
17 DEFENDERS OF WILDLIFE; NATURAL) DECLARATION OF ERIKA SCHREDER
18 RESOURCES DEFENSE COUNCIL;) IN SUPPORT OF PLAINTIFFS' MOTION
19 CENTER FOR BIOLOGICAL DIVERSITY;) TO COMPLETE RECORD
20 PACIFIC COAST FEDERATION OF)
21 FISHERMEN'S ASSOCIATIONS;)
22 INSTITUTE FOR FISHERIES RESOURCES;)
23 and HELPING OUR PENINSULA'S)
24 ENVIRONMENT,)

25 Plaintiffs,

26 v.

27 UNITED STATES DEPARTMENT OF)
28 INTERIOR; UNITED STATES)
29 DEPARTMENT OF FISH AND WILDLIFE)
30 SERVICE; UNITED STATES)
31 DEPARTMENT OF COMMERCE; and)
32 NATIONAL MARINE FISHERIES)
33 SERVICE,)

34 Defendants,

35 DECLARATION OF ERIKA SCHREDER
36 IN SUPPORT OF PLAINTIFFS' MOTION
TO COMPLETE RECORD (C04-1998) - 1 -

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1
2 and)

3 CROPLIFE AMERICA, WASHINGTON)
4 FRIENDS OF FARMS AND FORESTS,)
5 WASHINGTON STATE POTATO)
6 COMMISSION, NATIONAL POTATO)
7 COUNCIL, WASHINGTON STATE FARM)
8 BUREAU, IDAHO FARM BUREAU)
9 FEDERATION OF WHEAT GROWERS,)
10 WASHINGTON GOLF COURSE)
11 SUPERINTENDENTS ASSOCIATION, HOP)
12 GROWERS OF WASHINGTON, AND)
13 WASHINGTON STATE HORTICULTURAL)
14 ASSOCIATION,)

15 Defendant-Intervenors.)
16)
17)
18)
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24)

25 I, Erika Schreder, hereby state and declare as follows:

26 1. I am the Staff Scientist for the Washington Toxics Coalition ("WTC"). As Staff
Scientist, I have responsibility for managing our organization's work to protect salmon and water
from the effects of toxic pesticides.

2. On April 15, 2004, I submitted a public records request to the Washington State
Department of Agriculture ("WSDA"), requesting "records related to the federal consultation on
the impacts of pesticides on salmon, including but not limited to communications between the
department and federal agencies and communications between the department and other parties."

3. In response to this public records request, I received a letter from the Pesticide
Management Division of the WSDA dated April 30, 2004, informing me that the requested
documents would be sent to me in two batches: the first set by May 12, 2004, and the second set
by June 30, 2004. A true and correct copy of this letter is attached hereto as Exhibit 1.

4. I received a letter dated May 12, 2004 from the Pesticide Management Division of

1 the WSDA, enclosing 197 pages of documents and one compact disc. The letter briefly
2 describes each of the enclosed documents. A true and correct copy of this letter is attached
3 hereto as Exhibit 2.

4 5. I also received a letter dated June 29, 2004 from the Pesticide Management
5 Division of the WSDA, enclosing 296 pages of documents and one compact disc. The letter
6 briefly describes each of the enclosed documents. A true and correct copy of this letter is
7 attached hereto as Exhibit 3.

8 6. Many of the documents I received from my public records request to the WSDA
9 demonstrate that the U.S. Fish and Wildlife Service ("FWS") and National Marine Fisheries
10 Service ("NMFS" or "NOAA Fisheries") were concerned about EPA's scientific methods in
11 evaluating the effects of pesticides on salmon and other listed species. Other documents show
12 that drafts of documents relied on in the Counterpart Regulation were circulated among the
13 agencies for review and comment. I attach true and correct copies of these documents to these
14 declarations, as discussed in further detail below.

15 7. Attached as Exhibits 4 and 5 are two documents entitled "Fish and Wildlife
16 Service: Preparatory Notes for 12/3/03 Meeting." Exhibit 4 is subtitled "Use of Surrogate
17 Species." Exhibit 5 is subtitled "Exposure Pathways." These documents discuss the Fish and
18 Wildlife Service's concerns regarding EPA's tests in support of pesticide registrations. Based on
19 a brief review of the scientific literature, FWS concludes in Exhibit 4 that EPA should use a
20 more conservative approach when extrapolating the effects on surrogate species to listed species.
21 FWS concludes in Exhibit 5 that EPA should modify its risk assessments with respect to
22 exposure pathways in aquatic environments.

23 8. Attached as Exhibit 6 is an April 2004 draft letter from NMFS to EPA refusing to
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1 concur in EPA's "not likely to adversely affect" determinations for 28 pesticides on salmon and
2 steelhead because because EPA's authorization of these pesticides use may have "greater than
3 discountable or insignificant effects on listed species." Id. at 1. The letter further states that
4 EPA's methods fail to apply the best commercial and scientific data available, insufficiently
5 describe the proposed action, provide an incomplete environmental baseline, inadequately assess
6 cumulative effects, and provide an insufficient analysis of sublethal effects of pesticides on
7 salmon and steelhead. Id. at 2-3.

8 9. Attached as Exhibit 7 is a draft of the "Overview of the Ecological Risk
9 Assessment Process in the Office of Pesticide Programs, U.S. Environmental Protection Agency"
10 dated March 7, 2003. The draft includes handwritten notations.

11 10. Attached as Exhibit 8 is a December 16, 2003 document entitled, "Brief review of
12 the Dec. 15, 2003 Overview Document and the draft Services letter, Rachel Friedman, NOAA
13 Fisheries." This document addresses NMFS's concerns that the Overview document and draft
14 letter addressing its flaws are still insufficiently protective of listed species.

15 11. Attached as Exhibit 9 is a document entitled, "Additional questions from the
16 review of Overview and the support documents - April 3, 2003, Rachel Friedman." This
17 document discusses NMFS's concerns with EPA's risk assessment methods as described in the
18 Overview document.

19 12. Attached as Exhibit 10 is a draft letter dated September 5, 2003 from Stephen
20 Williams, Director, FWS and Laurie K. Allen, Acting Director, Office of Protected Resources, to
21 Jim Jones, EPA's Director, Office of Pesticide Programs. The letter discusses the Services'
22 suggestions for strengthening EPA's risk assessment procedures.

23 13. Attached as Exhibit 11 is a document dated August 19, 2003 from Tony Hawkes
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1 at FWS entitled, "Comments on Draft Response to EPA's Pesticide [Ecological Risk
2 Assessment] Process and Adequacy to Meet ESA Requirements." This document discusses
3 proposed revisions to address some of the Services' concerns with EPA's risk assessment
4 methods.

5 14. Attached as Exhibit 12 is a document dated June 12, 2003 from Jim Warren,
6 FWS, entitled, "Comments Re: 'Overview of the Ecological Risk Assessment Process in the
7 Pesticide Programs, U.S. Environmental Protection Agency.'" This document refers to a
8 February meeting that discussed the Overview document. It also states, at 1, that the recognition
9 of uncertainties in EPA's methods suggests that "the current overview does not provide the
10 information needed for the Service to make the decision that [EPA's] current [Office of Pesticide
11 Program's] process is protective of listed species."

12 15. Attached as Exhibit 13 is a June 5, 2003 Memorandum from Tony Hawkes, FWS
13 Environmental Contaminants Specialist, to Maria Boroja, FWS Endangered Species Program, on
14 the Subject, "Review of May 2, 2003 draft document 'Overview of the Ecological Risk
15 Assessment Process in the Office of Pesticide Programs, U.S. Environmental Protection
16 Agency.'" The Memorandum addresses technical aspects of EPA's ecological risk assessment
17 process and states, at 1, that "given data gaps, uncertainty, and process limitations[,] the
18 assessment process will need to be substantially modified to ensure EPA determinations . . . are
19 consistent with ESA."

20 16. Attached as Exhibit 14 is a draft March 2, 2004 letter from NOAA Fisheries to
21 EPA regarding the diazinon consultation, stating that NOAA Fisheries "is lacking specific
22 information about the action, without which consultation can not proceed."

23 17. Attached as Exhibit 15 is a draft May 23, 2003 letter from NOAA Fisheries to
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1 EPA also regarding the diazinon consultation, which asks EPA to supplement its consultation
2 initiation package. The letter attaches a 12-page document containing general and specific
3 comments on the diazinon initiation package, which identifies additional information needed for
4 the consultation.

5 18. Attached as Exhibit 16 are the written comments presented by a NOAA Fisheries
6 representative as part of a June 2003 panel to EPA on "Pesticides, Endangered Species, and the
7 Clean Water Act."

8 19. Attached as Exhibit 17 is a May 8, 2003 letter from NOAA Fisheries to EPA
9 requesting supplementation of the initiation packages for propargite, molinate, and thiobencarb
10 with an attachment identifying the information needed to begin formal consultation.

11 20. Attached as Exhibit 18 are draft comments from NOAA Fisheries on EPA's
12 consultation initiation package for metolachlor dated December 2002, and the April 1995
13 metolachlor RED.

14 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
15 and correct. Executed this 31st day of March, 2005, at Seattle, Washington

16 
17 _____
18 ERIKA SCHREDER